Choong Kwee Sang v Choong Kwee Keong (as the executor of the estate of Chan Fook Lin, deceased)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02–44 OF 1997
GOPAL SRI RAM, ZAINUN ALI AND HASAN LAH JJCA
20 JUNE 2008

Land Law — Ownership — Claim for — Equitable and beneficial ownership — Whether properties held in trust — Whether appellant equitable and beneficial owner of properties

Trusts and Trustees — Resulting trust — Purchase of property in joint names — Whether deceased held properties as resulting trust for appellant — Whether appellant's money was used to purchase properties — Whether appellant equitable and beneficial owner of properties

The appellant had filed a suit against his mother to recover two properties, namely a single storey shop house and a double storey bungalow ('the properties') which were registered in his mother's name. When the appellant's mother ('the deceased') passed away, the appellant's brother who became the executor of the deceased's estate ('the respondent') was substituted to carry on proceedings on behalf of the deceased's estate. The appellant who claimed that he had purchased the properties but had registered them in the name of the deceased upon his father's request sought, inter alia, a declaration that the deceased held both the said properties in trust for him. Although the properties were registered in the name of the deceased, it was the appellant's case that his money was used to purchase the properties and therefore the proprietorship thereof was governed by the equitable doctrine of 'resulting trust' in his favour. In short, the appellant contended that even if the properties were registered in the deceased's name, the monies were provided for by him and therefore the properties belonged to him as equitable and beneficial owner. In reply the respondent contended that the appellant bore the onus of proving that he was the purchaser of the properties and that he had the financial means to do so. The respondent therefore submitted that the appellant had to identify the sources of funds for the purchase of the bungalow, which cost RM74,000 plus RM1,286 legal fees and disbursement, and the purchase of the shop house, which cost RM84,000 plus RM1,567 as legal fees and disbursement. This meant that the appellant had to prove that he had provided the total sum of RM160,853 to purchase the properties. The

A appellant's case was that the entire purchase price of the properties came from a bank account that was in the joint names of the appellant and his father. The appellant further claimed that although the account was in joint names, his father's contribution to the account was minimal due to his meager salary and commitments to his family. On the other hand the appellant claimed B that he had deposited all his income from working in a Singapore company into this joint account and had not withdrawn any monies from the account for household and personal expenses. The appellant also contended that from the sale of his house at Jalan Gelam, RM25,000 was utilised to buy the bungalow and the balance RM34,700 was used to buy the shop house. C However, the respondent submitted that the appellant's father's financial burden was alleviated by his three daughter's monthly contributions to him. In addition the respondent submitted that although the appellant was the registered proprietor of the house in Jalan Gelam the appellant's father had paid for the purchase of the house and there was a trust deed to prove that D the house was held by the appellant on trust for the benefit of the appellant's father and heirs. The trial judge held that the deceased did not hold the properties on trust in favour of the appellant but that she was the legal and beneficial owner of the properties. The appellant appealed against that decision and maintained that he had utilised his own savings and income to E purchase the properties. The issues before the court in this appeal were whether the appellant could prove by oral or documentary evidence that he purchased the properties with his own money and if so whether the properties which were registered in the deceased's name were held by her in trust for the appellant. F

Held, dismissing the appeal with costs:

G (1) The evidence that the appellant's father had paid for the purchase of the house in Jalan Gelam was not challenged and therefore there was no good reason to interfere with the trial judge's finding of fact in this regard that the sale and purchase of the house in Jalan Gelam was executed by the appellant's father as purchaser. The fact that the H appellant's father retained the title deed and all other documents related to the property further supported the respondent's contention that although the Jalan Gelam house was registered in the appellant's name, the appellant's father retained possession, control and ownership of the same (see paras 44–45).

I (2) The appellant had also failed to prove that he had provided the RM38,000 which he had saved from his income and mileage claims and allowances to pay for the Jalan Gelam house, since the documentary proof of such claims was never tendered as evidence (see paras 48–49).

(3) The trial judge was correct in holding that the appellant did not purchase the properties because the sources of fund did not show the appellant as contributor. Taking into account the appellant's financial commitments such as deductions for personal and family expenses, payment of car loans, income tax and EPF contributions and so on it would have been a Herculean task for the appellant to have raised the RM74,000 to purchase the bungalow house. If the fact that the appellant lost his job in August 1980 were taken into account then his financial position became even more precarious and this would have left him with little chance to afford to purchase the properties (see paras 53–54).

(4) In the instant case the appellant had not only failed to dislodge the burden of having to prove that he paid for the properties but he had also failed the additional burden of proving that the deceased held them in trust for him. At the time of the purchase of the properties by the appellant's father there was no implied nor express certainty that the appellant had a beneficial interest in the properties (see paras 56 & 69).

(5) Even if there was a resulting trust this could be rebutted by parol evidence. Such evidence was provided by the deceased when she testified in the sessions court that the appellant's father had paid the quit rent, outgoings and assessment during his lifetime and that after he died she had paid the same. In view of this, the appellant had failed to prove that he had paid for the properties and in that connection, the question of a resulting trust in the appellant's favour did not arise at all (see paras 76–77).

[Bahasa Malaysia summary

Perayu memfailkan guaman terhadap ibunya untuk mendapat balik dua hartanah iaitu rumah kedai satu tingkat dan banglo dua tingkat ('hartanah tersebut') yang didaftarkan atas nama ibunya. Apabila ibu perayu ('si mati') meninggal dunia abang perayu yang menjadi pentadbir harta pusaka si mati ('responden') telah digantikan untuk melaksanakan prosiding bagi pihak harta pusaka si mati. Perayu yang mendakwa dia telah membeli hartanah tersebut tetapi mendaftarkan atas nama si mati atas permintaan bapanya memohon, antara lain, deklarasi bahawa si mati memegang kedua-dua hartanah tersebut sebagai amanah baginya. Meskipun hartanah tersebut didaftarkan atas nama si mati, ia adalah kes perayu yang wangnya digunakan untuk membeli hartanah tersebut dan oleh itu keempunyaan dikawal oleh doktrin 'amanah berbangkit' berpihak padanya. Pendek kata, perayu menegaskan meskipun hartanah tersebut didaftarkan atas nama si mati, wang diberikan olehnya dan oleh itu pemilik ekuiti dan benefisiari hartanah tersebut adalah miliknya. Sebagai jawapan responden menegaskan bahawa

perayu mempunyai beban membuktikan dia pembeli hartanah tersebut dan dia mempunyai sumber kewangan untuk berbuat demikian. Oleh itu responden menghujahkan bahawa perayu hendaklah mengenal pasti sumber kewangan untuk belian banglo tersebut, yang berharga RM74,000 bersama RM1,286 sebagai yuran guaman dan pembayaran, dan belian rumah kedai, yang berharga RM84,000 bersama RM1,567 sebagai yuran guaman dan pembayaran. Ini bermaksud perayu perlu membuktikan dia telah memberikan jumlah keseluruhan RM160,853 untuk membeli hartanah tersebut. Kes perayu adalah bahawa keseluruhan harga belian hartanah tersebut datang daripada akaun bank atas nama bersama perayu dan bapanya. Perayu selanjutnya mendakwa meskipun akaun itu dalam nama bersama, sumbangan bapanya kepada akaun itu sedikit oleh kerana gajinya tidak seberapa dan tanggungan keluarganya. Sebaliknya perayu mendakwa dia telah mendepositkan semua pendapatannya daripada bekerja di sebuah syarikat Singapura ke dalam akaun bersama ini dan tidak mengeluarkan apa-apa wang daripada akaun itu untuk perbelanjaan rumah dan peribadi. Perayu juga menegaskan bahawa daripada jualan rumahnya di Jalan Gelam, RM25,000 telah digunakan untuk membeli banglo dan baki RM34,700 telah digunakan untuk membeli rumah kedai. Walau bagaimanapun, responden menghujahkan bahawa beban kewangan bapa perayu dikurangkan oleh sumbangan bulanan tiga anak perempuannya. Tambahan responden menghujahkan meskipun perayu tuan punya berdaftar rumah di Jalan Gelam bapa perayu telah membayar untuk belian rumah tersebut dan terdapat surat ikatan amanah untuk membuktikan rumah tersebut dipegang oleh perayu atas amanah untuk manfaat bapa dan waris perayu. Hakim perbicaraan memutuskan bahawa si mati tidak memegang hartanah tersebut atas amanah berpihak kepada perayu tetapi bahawa dia adalah pemilik sah dan benefisiari hartanah tersebut. Perayu merayu terhadap keputusan tersebut dan mengekalkan dia telah menggunakan simpanan dan pendapatan sendiri untuk belian hartanah tersebut. Isu-isu di hadapan mahkamah dalam rayuan ini adalah sama ada perayu boleh membuktikan melalui keterangan lisan atau dokumentar yang dia telah membeli hartanah tersebut dengan wangnya sendiri dan jika sedemikian sama ada hartanah tersebut didaftarkan dalam nama si mati dipegang olehnya atas amanah untuk perayu.

Diputuskan, menolak rayuan dengan kos:

(1) Keterangan bahawa bapa perayu telah membayar belian rumah di Jalan Gelam tidak dicabar dan oleh itu tidak ada sebab yang baik untuk campur tangan dengan penemuan fakta hakim bicara bahawa jualan dan belian rumah di Jalan Gelam disempurnakan oleh bapa perayu sebagai pembeli. Hakikat bahawa bapa perayu mengekalkan surat ikatan hak milik dan semua dokumen lain berkaitan hartanah tersebut menyokong hujah responden bahawa meskipun rumah Jalan Gelam

didaftarkan atas nama perayu, bapa perayu masih mengekalkan milikan, kawalan dan keempunyaan yang sama (lihat perenggan 44–45).

(2) Perayu juga gagal membuktikan bahawa dia telah memberikan RM38,000 yang telah disimpannya daripada pendapatan dan tuntutan perjalanannya dan elaun untuk membayar rumah Jalan Gelam, memandangkan bukti dokumentar tuntutan sedemikian tidak pernah dikemukakan sebagai keterangan (lihat perenggan 48–49).

(3) Hakim bicara betul dalam keputusan bahawa perayu tidak membeli hartanah tersebut kerana sumber kewangan tidak menunjukkan perayu sebagai penyumbang. Dengan mengambilkira tanggungan kewangan perayu seperti potongan untuk perbelanjaan peribadi dan keluarga, bayaran pinjaman kereta, cukai pendapatan dan caruman KWSP dan lain-lain ia mungkin tugas sukar untuk perayu mendapatkan RM74,000 untuk membeli rumah banglo. Jika pada hakikatnya perayu telah hilang pekerjaan dalam bulan Ogos 1980 diambil kira maka kedudukan kewangannya menjadi lebih tidak tentu dan ini akan meninggalkannya dengan peluang tipis untuk mampu membeli hartanah tersebut (lihat perenggan 53–54).

(4) Dalam kes ini perayu bukan hanya gagal melepaskan beban membuktikan yang dia telah membayar hartanah tersebut tetapi dia juga gagal membuktikan beban tambahan bahawa si mati memegangnya sebagai amanah untuk dia. Pada masa belian hartanah tersebut oleh bapa perayu tidak ada apa yang tersirat ataupun dinyatakan kepastian bahawa perayu mempunyai kepentingan benefisiari dalam hartanah tersebut (lihat perenggan 69).

(5) Meskipun terdapat amanah berbangkit, ini boleh dipatahkan dengan keterangan parol. Keterangan sebegini diperuntukkan oleh si mati apabila dia memberi keterangan di mahkamah sesyen bahawa bapa perayu telah membayar cukai tanah, wang keluar dan taksiran sepanjang hayatnya dan bahawa selepas bapanya meninggal dunia dia masih membuat bayaran yang sama. Berdasarkan ini, perayu telah gagal membuktikan bahawa dia telah membayar untuk hartanah tersebut dan berkaitan itu, persoalan tentang amanah berbangkit memihak kepada perayu tidak timbul langsung (lihat perenggan 76–77).]

Notes

For cases on claim for ownership, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3393–3396.

For cases on purchase of property in joint names, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2466–2467.

Cases referred to

Black Uhlans Inc v New South Wales Crime Commission [2002] NSWSC 1060, SC (refd)
Cossev v Bach [1992] 3 NZLR 612, HC (refd)
Loo Hon Kong v Loo Kim Lin [2004] 4 CLJ 1, CA (not folld)
Midland Bank Plc v Cooke [1995] 4 All ER 562, CA (refd)
Pettit v Pettit [1970] AC 777, HL (refd)
Po Kin & Anor v Po Shein AIR 1926 PC 77 (refd)
Vandervell's Trusts (No 2), White and Ors, Re v Vandervell Trustees Ltd [1974] Ch 269, CA (refd)
Westdeutsche Landesbank Girozentrale v Islington London Borough Council [1996] AC 669, HL (refd)

Legislation referred to

Evidence Act 1950 s 102

Appeal from: Civil Suit No 22–167 of 1990 (High Court, Johor Bahru)

VK Lingam (R Thayalan with him) (R Thayalan) for the appellant.
Tan Jin Wah (Tan Jin Wah) for the respondent.

Zainun Ali JCA (delivering judgment of the court):

[1] In this appeal, the appellant failed in the court below in the reliefs sought, inter alia, that he is the beneficial and equitable owner of two properties ie property No 37 Jalan Serigala, Johor Bahru which is a single story shop house and property No 21 Jalan Balau, Johor Bahru a double storey bungalow (hereinafter referred to as the 'subject properties'). The learned trial judge dismissed the appellant's claim. His Lordship found that the appellant's mother (the 'deceased') did not hold the above properties on trust in the appellant's favour; that the appellant's income made it impossible for him to have afforded the properties concerned, thus he could not have paid for them; that in fact the deceased was the legal and beneficial owner of the said properties.

THE APPELLANT'S CASE

[2] It is the appellant's case that he utilised his own savings and income to purchase the following properties, namely:

(i) A property held under Grant 23385 Lot 9372 together with a double storey bungalow known as No 21, Jalan Balau, Johor Bahru for $74,000 by agreement of sale and purchase dated 16 April 1978 ('the Jalan Balau bungalow'); and

(ii) The property held under HS(D) 26817 PT TLO 2990 Johor Bahru together with a single storey shop-house known as No 37 Jalan Serigala, Johor Bahru for $84,000 by sale and purchase agreement dated 22 August 1979 ('the shop-house'). The appellant claimed that he purchased the subject properties but had them registered in his mother's name (the deceased) upon his father's request. The appellant claimed that the deceased held the properties in trust for him and would have them transferred to him on demand. The appellant had filed a suit against the deceased to recover the subject properties. The deceased passed away on 5 October 1992 and by order of court of 20 January 1993, the respondent (the appellant's younger brother) who was the executor of the deceased's estate, was substituted to carry on proceedings on behalf of the deceased's estate.

[3] The appellant sought several reliefs in the court below. He sought the following declarations:

(i) that the deceased held both the said properties in trust for him;

(ii) that he is the beneficial owner of the said properties;

(iii) that the deceased is a constructive and/or resulting trustee in respect of the said properties for him; and

(iv) that the deceased is presumed to him as 'trustee de son tort' of the said properties. The appellant also prayed, for the following orders:

(a) that the respondent execute a valid and registrable instrument of trust of the shop-house to the appellant; and

(b) that the respondent do quit and deliver vacant possession of the shop-house to the appellant, notwithstanding that the shop-house has been sold by the deceased by sale and purchase agreement dated 4 July 1990 to one Harry Roy Nanda who is not a party to the proceedings.

[4] The appellant's case is that the entire purchase price of the said subject properties came from account No 03–035–712 with the Hongkong and Shanghai Banking Corp. This account is in the joint names of the appellant and his father, Choong Ah Kow ('the joint account'). The appellant claimed that his father's contribution towards the said joint account was minimal, because due to his meager salary and financial commitment to his family, nothing much was left by his father by way of savings in the joint account. On the other hand, the appellant claimed that from the very first day of his working life with a Singapore company, he had deposited all his income into this joint account. He claimed that he did not withdraw any monies from the said joint account for household and personal expenses. That together with

his salary and travelling allowances and claims his portion in the joint account was substantial enough for him to have purchased the subject properties.

[5] The appellant gave details of his purchases of the subject properties in this manner.

The bungalow at No 21 Jalan Balau, Johor Bahru

[6] In claiming that he had solely and fully contributed in the purchase of the above said property the appellant contended that the purchase price was $74,000 from which he paid $7,400 ie 10% initially. This was made by cheque of the joint account at HSBC Johor Bahru. The legal firm of M/s LM Ong issued the receipt.

[7] Further payments of $10,000 and $56,000 were paid by cheques from the joint account. The balance was paid by cashier's order issued by OCBC Johor Bahru.

[8] The fees for M/s LM Ong of $1,286 was paid by cheque from the same joint account. The appellant claimed that all the above payments were his money and paid by him.

[9] It is the appellant's contention that the source for the above purchase (21, Jalan Balau) came from the sale of his house at 25, Jalan Gelam, Majidee Park, Johor Bahru.

[10] It is the appellant's contention that out of the Jalan Gelam house sale, $25,000 was utilised to buy the bungalow house. The balance of $34,700 from the sale of the Jalan Gelam house was used to buy the shop-house.

[11] The learned trial judge had ruled that 'on a balance of probabilities, I am of the view that the plaintiff (appellant) has failed to prove that he had funds amounting to $38,000 to pay for the Jalan Gelam house which he claimed was paid by him in cash'.

[12] The appellant countered the judge's finding and stressed that after deducting EPF/CPF his total income for the period between 1969–1972 was $18,818.63. The appellant claimed he earned transport allowances amounting to $7,000 from 1969–1972.

[13] The total figure is thus $25,024. The difference of $12,966 was made up from his mileage claims for three years, outstation allowances paid for the

same period, allowance paid to him when he worked in Indonesian and the monies contributed to him by his wife who was a teacher.

[14] The appellant refuted his father's contention that he had money in the joint account, since he was not earning much as a clerk with Metal Box Company in Singapore. After working for 26 years, the appellant calculated that his father's CPF contribution was only about $34,817.40. The appellant emphasised the heavy financial burden his father had to bear to educate him and his siblings since his father had supported him when he studied in Scotland, and supported his sister financially when she studied medicine in the University of Singapore for five years. He said his father also supported another sister financially when she studied for four years and likewise for his younger brother who studied as a private student for his higher school certificate. All of them, the appellant contended were supported financially by his father. In view of the above the appellant contended that his father could not possibly have afforded to pay for the subject properties.

The purchase of the shop-house — 37 Jalan Serigala, Johor Bahru

[15] It is the appellant's case that the other subject properties ie the shop-house which cost $84,000 was paid for solely by him using his own money. The appellant gave the breakdown of the purchase of the same as follows:

(a) $34,700 was from the sale of the Jalan Gelam house.

(b) $30,000 was from the time deposit balance of $30,000.

[16] The appellant contended that the sum of $21,616.69 given by his employer, Ageliem Sdn Bhd as arrears, was mostly used to pay for the property. The appellant claimed that the total amount he paid was $84,000 plus legal fees of $1,569.40 and brokerage fees of $840.

[17] The appellant further contended that his total income was about $125,000 out of which he saved $60,000 which was deposited in a time deposit account.

[18] It is also the appellant's case he had the title deeds of the subject properties in his possession. This, he said, is consistent with the fact that he was the purchaser of both subject properties, and that the deceased was merely holding them in trust for him.

[19] The appellant also submitted that in view of the above mentioned facts and since he paid for all the quit rent and assessment and all other

A outgoings for both these properties ever since they were purchased, these properties are, undoubtedly held by the deceased on a resulting trust in his favour.

B **[20]** Now, what do the facts and evidence show?

THE RESPONDENT'S CASE

C **[21]** A brief account of the background as indicated by the respondent would help put matters in perspective.

D **[22]** According to the respondent, the whole family initially stayed in a house at Jalan Wijaya, Johor Bahru. In view of the appellant's impending marriage, their father purchased a house at Jalan Gelam. This evidence is contrary to that of the appellant who said that it was he who purchased the Jalan Gelam property. The whole family moved there, and the Jalan Wijaya house was rented out by their father.

E **[23]** It is the respondent's evidence that four of his sisters gave their parents varying amounts of monthly allowances.

F **[24]** The first sister stayed with the family and worked as a clerk from 1965 until 1970 when she got married. She gave their parents about $100 monthly. His second sister was a teacher in 1969 and prior to her marriage in 1973, she gave about $200–$250 monthly to their parents. She continued giving them this allowance even after her marriage, though on an irregular basis. The third sister graduated as a doctor in 1975. She won a scholarship in her second year at university and it continued until she graduated. When she started work in 1976 she gave about $500–$600 monthly to her parents. She also made contributions to the respondent's educational expenses at Stirling University. The fourth sister was a teacher and gave her parents a monthly allowance of $300–$350.

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H **[25]** The respondent testified that the appellant himself did not make monthly contributions to the family ever since he worked. But after his marriage in 1972 he would give his parents $100 to $150 per month on an irregular basis.

I **[26]** The respondent went on to say that as far as he knew, he himself was 'low maintenance' for his parents, in that when he was studying at Stirling University three of his sisters contributed a total sum of $850 per month for his education which was adequate for him to complete his studies there. In

short, his parents either need not contribute or contributed minimally in financial terms towards his education at Stirling University in Scotland.

[27] The respondent therefore contended that against the above background, the appellant's contention that their father's contribution both towards the joint account and towards the purchase of the subject properties was minimal or nil, due to family commitment, could not have been entirely true. The father's financial burden was alleviated by his three daughters' monthly contributions to him and helping him out with the educational expenses of the appellant and the respondent.

[28] It is not in dispute that the subject properties were registered in the name of the deceased. However it is the appellant's case that since it was with his money that the subject properties were purchased, the proprietorship thereof is governed by the equitable doctrine of 'resulting trust' in his favour (the appellant's).

[29] In short, the appellant contended that even if the subject properties were registered in the deceased's name, the monies were provided for by him and thus, the subject properties belong to him as equitable and beneficial owner.

[30] A 'resulting trust' is defined as such:

> This trust arises by presumption where one party buys property, registers it in the name of a second party in circumstances where the first party has supplied the money for the purchase. Thus the registered proprietor is presumed to hold the property on trust for the supplier of the money (per Judith Sihombing in *National Land Code: A Commentary*).

[31] The question whether there exists a resulting trust in the appellant's favour will be answered and expanded latterly.

[32] The respondent's answer to the appellant's claim of a resulting trust in his favour is to contend that the onus of proof lies squarely on the appellant to prove strictly by a preponderance of evidence that he was the true purchaser of the subject properties and that he had the financial means to do so.

[33] This basically means that the appellant has to identify the sources of funds for the purchase of the bungalow (which cost $74,000 plus $1,286 legal fees and disbursements) and purchase of the shop-house (which cost

A $84,000 plus $1,567 as legal fees and disbursement). The total sum is $160,853. The appellant has also to prove that it was with his monies that the subject properties were paid for.

B **[34]** In that connection, the respondent submitted that the appellant must strictly prove that his income after deductions of EPF/CPF, income tax, family, personal and motorcar and other expenses left him with enough money to purchase the Jalan Gelam house for $38,000 in cash which the appellant said was his matrimonial home.

C **[35]** The appellant has also to prove that he purchased the subject properties subsequently with his monies in the joint account. The respondent quoted s 102 of the Evidence Act 1950 which reads:

D > The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

FINDINGS OF THE COURT

E **[36]** After looking at the reliefs prayed for, and the evidence before me, I believe the starting point would be this:

(a) Whether the appellant can prove by oral or documentary evidence that he purchased the subject properties with his own money; and

F (b) If the answer to (a) is in the affirmative, whether in the light of surrounding circumstances the fact that it was registered in his deceased mother's name gives rise to a resulting trust in the appellant's favour.

G **[37]** Firstly the documentary evidence at the trial reflected the appellant's total declared nett income (ie after the necessary deductions of EPF and income tax from 20 October 1969 to end of 1972) was $12,274.91. He took a car loan of $3,000 and after deducting monthly payments the amount he had would be reduced to $9,274.91. The appellant claimed that his earnings, mileage claims and allowances were saved and deposited into the joint H account. With that money, the appellant said he bought the $38,000 single storey bungalow house (the Jalan Gelam house) which was paid in cash. He said this became his matrimonial home when he got married in December 1972.

I **[38]** However under cross-examination he admitted that his mileage claims and allowances were actually reimbursements for monies he had spent. The appellant was also unable to show documentary proof of these allowances.

[39] The appellant claimed that he sold the Jalan Gelam house on 19 March 1978 for $61,000 and deposited the proceeds of sale between the period of March 1978 and July 1978 into the joint accounts as follows:

(i)	$5,000	20 March 1978
(ii)	$20,000	6 April 1978
(iii)	$30,000	20 June 1978
(iv)	$4,700	17 July 1978.

[40] The appellant said that he bought a bungalow at Jalan Balau, which cost $74,000 but paid the developer only $25,000 initially. Thus instead of paying the balance amount due for the bungalow, the appellant said he used the balance of the sale of the Jalan Gelam house (amounting to $34,700) to purchase the shop-house for $84,000.

[41] The appellant was adamant that all the monies used to purchase both the bungalows and the shop-house were his own monies which he said he had deposited in the joint-account. He claimed that his father had not much left in the joint account after expending monies on his family of four growing daughters and a son.

[42] He said that his mother (the deceased) was a housewife and so had no income of her own. With his father's commitment to support his sister who was studying medicine at the University of Singapore and supporting him (the appellant) at a private college, his father's contribution towards the joint account was almost zero. The appellant said that his father had to sell their family house in Jalan Wijaya in 1978 for $52,000 to pay for the respondent's education at Stirling University, Scotland. Though his father deposited the proceeds of the sale of the Jalan Wijaya house into the joint account, the appellant said those monies were never utilised to make payment towards the purchase of the subject properties.

[43] After carefully perusing the material before me, I find no good reason to interfere with the findings of fact of the learned trial judge, that:

(i) the sale and purchase agreement of the Jalan Gelam house dated 29 October 1972 was executed by the appellant's father as purchaser;

(ii) DW1, (solicitor) prepared the trust deed and power of attorney upon instruction by the appellant's father. These documents were executed by the appellant in favour of the appellant's father prior to the property being transferred and registered in the appellant's name. The appellant was registered as proprietor of Jalan Gelam House on 15 February 1973.

A (iii) DW1 explained that the purpose of the trust deed was for the appellant to hold the property for the benefit of his father and heirs.

[44] DW1's evidence was not challenged. But what is crucial is, it was the *appellant's father who paid* for the above said property. This evidence was not
B challenged.

[45] Consequently, I am unable to find any good reason to interfere with the trial judge's findings of fact that when the Jalan Gelam house was sold in 1978, the solicitors acting for the purchasers of the said house acknowledged
C that they received the title deed of the said property, the power of attorney and receipts for quit rent from 1971–1978 and receipt for assessment (for 1972–1978), *from the appellant's father*. Thus it is apparent that though the Jalan Gelam house was registered in the appellant's name, the appellant's father retained the title deed and all other documents related to the property.
D These by themselves provide eloquent testimony of possession, control and ownership, strengthened by evidence of payment of the property, on the unchallenged testimony of the conveying solicitor.

E **[46]** In view of the above, clearly the appellant's submission that he paid cash of $38,000 in 1972 for the Jalan Gelam house is not sustainable. I find that even on a balance of probabilities the evidence does not tilt in the appellant's favour.

F **[47]** As evidence have shown, his nett earnings up to the end of 1972 was only $9,271.91 less EPF/CPF deduction and less the $3,000 car loan — not taking into account his living expenses nor the $2,000 down payment for the purchase of the motorcar which he said came from his savings.

G **[48]** Though the appellant tried to show he had other income, namely his travel allowances for working trips to Indonesia and East Malaysia, the documentary proof of such claims never surfaced.

[49] I agree with the learned trial judge's finding that the appellant had
H failed to prove that he had $38,000 which he said he had saved from his income and mileage claims and allowances to pay for the Jalan Gelam house.

[50] The appellant's contention with regard to his purchase of the Jalan Balau house, suffered the same fate. The official receipts issued by DWTs law
I firm for the purchase and legal fees for purchase of the Jalan Balau house, showed that they were all issued in the name of Choong Ah Kow (the appellant's father). Thus it was the appellant's father who made the payment, clearly rebutting the appellant's contention that he paid for it. The deceased was registered as proprietor of the Jalan Balau house on 7 August 1978.

[51] With regard to the No 37 Jalan Serigala shophouse, the sale and purchase agreement dated 22 August 1979 showed the appellant's father as the purchaser, for the amount of $8,000 (bills and payment receipts of purchase price issued in his name). The appellant's father also wrote a letter dated 27 October 1979 to the vendor, asking for the property to be transferred to the deceased.

[52] However the appellant's trump card was that he had possession of the two title deeds of the subject properties; and that this fact is evidence of his interest both legally and beneficially that he purchased the subject properties. Curiously, it is noted that this simplistic notion was never raised in the court below.

[53] I find that the trial judge was correct in holding that the appellant did not purchase the subject properties. The sources of fund did not show the appellant as contributor. The documentary evidence is clear. The appellant could not have purchased the first property (the Jalan Gelam house) for $38,000 from savings of salaries and allowances as his total nett earning as shown in his income tax assessment 1969–1972 was $9,274.91 (see p 38 of the AR). His claim that he purchased the second property for $74,000 (the Jalan Balau house) from savings is also dubious; this is because his total nett earning as shown in his income tax returns for 1973–1978 was $88,023.42 (see p 586–591 of the AR) — out of which $17,627.36 was stashed away in a fixed deposit in a bank, thus his total earnings available at time of purchase ie on 16 April 1978 was $70,396.06. Taking into account his financial commitments such as deduction for personal and family expenses, payment of car loans, income tax and EPF contributions etc, even if there are savings it would be a herculean task indeed for the appellant to have to come up with the purchase price of $74,000 (not including stamp duty and legal fees) to purchase the Jalan Balau house.

[54] This is not even taking into account the fact that the appellant lost his job in August 1980. It made his financial position even more precarious. Based on the above, chances are that his savings were used up for his daily expenses and thus what is then left to afford him the purchase of the subject properties?

[55] Quite apart from his failure to show he had the means to purchase the subject properties, the appellant had also failed to show the plausibility of the existence of a resulting trust in his favour when the subject properties were registered in the name of the deceased.

[56] Even if the appellant successfully proves that he paid for the subject properties with his own money, he has to go one step further. He has to show

A that they were registered in the deceased's name not as a gift per se to her, but as his trustee, holding it in his favour, on a resulting trust. In the instant case the appellant had not only failed to dislodge the burden of having to prove he paid for the subject properties, he had also failed the additional burden of proving the deceased held them in trust for him.

B

[57] The burden is a heavy one, as Lord Chancellor in *Po Kin & Anor v Po Shein* AIR 1926 PC 77 said:

> ... the person who alleges that property conveyed to another belongs to him must
C prove his allegation and prove it beyond reasonable doubt ...

[58] The onus being such, I am unable see how the appellant's case, based on the evidence adduced by him as it were, can hold up to scrutiny.

D

[59] I shall now address the issue central to the appellant's defence ie whether there is resulting trust in his favour.

[60] As alluded to earlier, a resulting trust arises when one person (the
E settlor) confers title to property on another person but the settler retains beneficial ownership of the property, in whole or in part (*Cossey v Bach* [1992] 3 NZLR 612).

[61] The legal interest vests in the title holder (the trustee) whereas the
F beneficial interest results to the settlor. In the instant case the appellant's contention is that the legal interests in the subject property vest in the deceased, whilst the beneficial interest result to him since he paid for the subject properties.

G

[62] It would be instructive to clearly define resulting trusts, which have been classified into two main categories:

(i) presumed resulting trust; and

H (ii) automatic resulting trust.

[63] In (i) above, the matter 'is one of intention, with the rebuttable presumption of a resulting trust applying if the intention is not manifest'.

I **[64]** In the case of (ii) above, there is no mention of any expression of intention in an instrument or of any presumption of a resulting trust: the resulting trust takes effect by operation of law and so appears to be 'automatic' (per Megarry J in *Re Vandervell's Trusts (No 2), White and Ors v Vandervell Trustees Ltd* [1974] Ch 269).

[65] Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, at p 708 dealt with the very limited and well established circumstances in which a resulting trust may arise. His Lordship observed that:

> (A) Where *A* makes a voluntary payment to *B* or pays (wholly or in part for the purchase of property which is vested either in *B* alone or in the joint names of *A* and *B*, there is a presumption that *A* did not intend to make a gift to *B*: the money or property is held on trust for *A* (if he is the sole provider of the money) or in the case of a joint purchase by *A* and *B* in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter presumption of advancement or by direct evidence of *A*'s intention to make an outright transfer.
>
> (B) Where *A* transfers property to *B* on express trust, but the trusts declared do not exhaust the whole beneficial interest. Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but given effect to his presumed intention. Since the existence of a resulting trust is premised on the presumed intention of the parties to a particular type of transaction, it arises at the time of transaction.

[66] This means that, at the time of its creation there must be certainty of beneficial interest under a resulting trust (see *Midland Bank Plc v Cooke* [1995] 4 All ER 562 at p 574). Secondly, flowing from this first point, evidence of the actual intention of the parties' subsequent to the date at which the resulting trust is created (ie the date of the transaction) cannot serve to rebut the presumed intention that gave rise to the trust in the first place.

[67] As explained by Campbell J in *Black Uhlans Inc v New South Wales Crime Commission* [2002] NSWSC 1060:

> ... In deciding whether a presumption of resulting trust had been rebutted, it would be necessary for the court to take into account not only evidence going to the intention of the provider of the money which tended to cut down the presumption of resulting trust, but also any evidence which tended to strengthen the finding about intention which that presumption dictates. Only by taking into account both evidence which tends to cut down the presumption and evidence which tends to strengthen the finding about intention which the presumption dictates can the court reach a conclusion about whether, on the whole of the

A evidence, the presumption has been rebutted. The sort of conduct which could possibly be taken into account in this way could include who took occupation and control of the property, who made improvements to it and in what circumstances, who paid periodical outgoings on the property, who received any rent from the property, and who paid income tax on any rent received from the property. To the B extent that any of these types of transaction occurred at a time which was not so immediately thereafter as to constitute a part of the transaction, they could be taken into account only to the extent that they were admissions.

C **[68]** Going by the above observation, and looking at the instant appeal, the appellant seems to have fallen far short of proving his claim.

[69] Firstly, at the time of the purchase of both the subject properties by the appellant's father, there was not an implied, let alone an express certainty that it was upon the appellant that the beneficial interest lie. The only clear D evidence is that the purchases were made by the appellant's father which evidence had not been disputed nor rebutted. Following that, nothing was in evidence as to how the appellant's interest could have come about, which must supercede that of the deceased's.

E **[70]** Though the appellant relied on the authority of *Loo Hon Kong v Loo Kim Lin* [2004] 4 CLJ 1 at pp 9–10 to support his claim, the above authority is of little help to him. This is simply because in the above case, the fact that the plaintiff paid for the entire purchase price for the land was undisputed F and clearly established. The issue in that case, was that, since the land was registered in the defendant's name thus vesting legal ownership in the defendant, and because the relationship between the appellant and defendant does not come within the one of the categories recognised by equity as creating a presumption of advancement in favour of the defendant (as holder G of the legal title), the beneficial ownership results to the plaintiff. However, in the instant appeal, the appellant cannot have recourse to the above authority to support him because the fundamental issue of whether the appellant paid for the subject properties had not even been established by him.

H **[71]** The appellant had indicated that he paid for the outgoings, assessment and quit rents and that he had possession and control of the subject properties merely on the flimsy account that he had in his possession the title to them. As alluded to earlier, this is not evidence that he owns the subject I properties.

[72] The appellant only made a bare assertion that he had indicated to the deceased that even if he had the subject properties registered in her name he had made it clear to her that it was not intended as a gift.

[73] In fact, his very own evidence that he took his father's instructions to have the properties registered in the deceased's name considerably strengthened the proposition that it was his father who paid and owned the subject properties and was in control thereof. Would the appellant execute his father's instructions to have the properties registered in the deceased's name if it is true that the properties were hers, however filial a son he is? He might as well make an outright gift to his mother. But if he had no such intention the appellant would surely have some documentary or written evidence to protect his hard earned assets. But none was forthcoming.

[74] The appellant merely said that he had told his mother (the deceased) that though the properties were registered in her name they were to be held by her, in trust for him. This is what he said in evidence:

> ... I did explain to my mother that those two properties were really my properties and paid by me and that she is only holding the properties in her name in trust for me. I told her that she will have to transfer both the properties to me when I request her to do so ...

(See pp 114 and 115 of the AR Vol 5)

[75] The appellant's bare assertion as it were, was juxtaposed when the deceased disputed the appellant's claim by filing a suit against him in the sessions court on this very point, which further strengthened the presumption of resulting trust having been rebutted.

[76] In such a situation, even if there was a resulting trust, this can easily be rebutted by parol evidence. This the deceased did by testifying in the sessions court to recover possession of the 25, Jalan Balau House. There, the deceased testified denying that the appellant paid the quit rent, outgoings and assessment. She said it was her husband (the appellant's father) who paid the-same during his lifetime. And that after he died she paid for them. In the words of Lord Upjohn in *Pettit v Pettit* [1970] AC 777 '... all resulting trusts which arise simply from equitable presumptions may be rebutted by parol evidence ...'

[77] In view of the foregoing, I am satisfied that the appellant had failed to prove that it was he who paid for the subject properties. In that connection, the question of resulting trust in the appellant's favour does not arise at all.

[78] Consequently, I find no reason at all for appellate intervention in this case. My learned brothers Gopal Sri Ram JCA and Hassan Lah JCA, have read this judgment in draft and have expressed agreement with it to become the judgment of this court. In view of the reasons given above, the decision

of the High Court is affirmed. This appeal is hereby dismissed with costs. Deposit to the respondent to account for taxed costs.

Appeal dismissed with costs.

Reported by K Nesan